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News Releases

2008 | 2007 | 2006 | 2005 | 2004 | 2003 | 2002 | 2001 | 2000

02/04/2004

News Release: Protecting Their Rights

Protecting Their Rights:
A Systemic Review of Human Rights in
Correctional Services for Federally Sentenced Women

Ottawa – January 28, 2004 – In a report released today entitled *Protecting Their Rights*, the Canadian Human Rights Commission finds that women prisoners continue to face systemic human rights problems in the federal correctional system.

The report's main finding is that the correctional system needs to be more tailored to the unique needs and generally lower security risks posed by women offenders. Specifically, the correctional system should take a more gender-based approach to custody, programming and reintegration for women offenders.

The Commission found that, while Correctional Service Canada has made some progress in developing a system specifically for women offenders, systemic human rights problems remain, particularly with regard to Aboriginal women, racialized women and women with disabilities.

The report puts forward 19 recommendations for action and sets out guiding principles to ensure that the treatment of federally sentenced women is consistent with human rights laws:

- Federal women prisoners have a right not to be discriminated against and a right to correctional services as effective as those received by men.
- Equality must be based on the real needs and identities of women inmates, not on stereotypes or generalizations.
- Correctional Service Canada's duty to promote and protect the human rights of women means that it must take into account the fact that some of the reasons women offend, their life experiences and their rehabilitation needs are unique.

"Our objective was to apply a human rights analysis to the broader, systemic issues facing federally incarcerated women and to propose ways of bringing the correctional system into line with the letter and spirit of the *Canadian Human Rights Act*," said the Canadian Human Rights Chief Commissioner, Mary Gusella.

"I would like to thank the various associations which have worked with the Commission and all the staff and inmates of correctional facilities that met and discussed their situations openly and shared concerns with the Commission's staff," she added. "Submissions received from the Canadian Association of Elizabeth Fry Societies and other organizations have been of great assistance."

"We are encouraged by Correctional Service Canada's cooperation with, and involvement in, the development of this report. We are looking forward to continue working with Correctional
Service Canada on this challenging task of advancing human rights in the correctional system," added the Chief Commissioner.

Through its 19 recommendations, the report addresses risk and need assessment, safe and humane custody and supervision, rehabilitation and reintegration programming and mechanisms for redress.

Federally sentenced women are those who are serving federal terms of imprisonment of two years or more. They commit less violent crimes, receive shorter sentences and are more often first-time offenders than male inmates. Federally sentenced women have high rates of mental and physical disability, self-destructive behavior such as slashing and cutting, depression and suicide attempts. Eighty percent report prior abuse. Two-thirds are mothers and often have primary child-care responsibilities. They experience significant poverty and have higher unemployment rates than their male counterparts and Canadian women as a whole.

Many of the recommendations made in this report complement and support recommendations made in the 1996 Arbour Report that focused on a specific set of events at the now closed Kingston Prison for Women, and the recommendations made in the Public Accounts Committee Report released in November 2003 and in the Auditor General Report on the reintegration of women offenders released in April 2003. While the Commission approached the issues from a human rights perspective, there is common ground on many of the actions required.

Backgrounder 1: Release of the Special Report

Backgrounder 2: Recommendations of the Special Report

Submissions received by the Canadian Human Rights Commission for the report.

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Resources

Legislation and Policies

Submissions to Parliament

BACKGROUNDER 1

Release of the Special Report

Protecting Their Rights:
A Systemic Review of Human Rights in Correctional Services for Federally Sentenced Women

The report, *Protecting Their Rights: A Systemic Review of Human Rights in Correctional Services for Federally Sentenced Women*, looks at the systemic human rights issues facing federally sentenced women.

Background

In March 2001, the Canadian Human Rights Commission was approached by the Canadian Association of Elizabeth Fry Societies (CAEFS), supported by other human rights organizations, including the Native Women's Association of Canada (NWAC), the Canadian Bar Association (CBA), the National Association of Women and the Law and others. Their focus was the human rights situation of federally sentenced women, particularly Aboriginal women and women with disabilities.

An agreement was reached in late 2001 between CHRC and CAEFS to proceed with a special report instead of various separate, individual complaints, enabling the Commission to take a broad perspective and to make recommendations to address systemic human rights challenges.

The Commission then took a number of steps to gather information on the human rights situation of federally sentenced women.

How information was obtained

The Commission obtained information in a variety of ways. They included:

- interviews with staff, inmates and union representatives at all six correctional facilities for federally sentenced women and at three facilities for men where women were collocated;
- interviews at a range of community release facilities;
- ongoing meetings, workshops and roundtables with key stakeholders such as the Canadian Association of Elizabeth Fry Societies, the Office of the Correctional Investigator and the Correctional Service of Canada (CSC) and bilateral meetings with experts;

- distribution of a consultation paper and receipt of submissions from a variety of organizations in May 2003.

Key findings of the report

The Commission found that, while CSC has made some progress in developing a system specifically for women offenders, systemic human rights problems remain, particularly with regard to Aboriginal women, racialized women and women with disabilities.

The report sets out the following guiding principles to ensure that the treatment of federally sentenced women is consistent with human rights laws:

- federal women prisoners have a right not to be discriminated against and a right to correctional services as effective as those received by men;
- equality must be based on the real needs and identities of women inmates, not on stereotypes or generalizations; and
- the duty of CSC is to promote and protect the human rights of women and means that they must take into account the fact that some of the reasons women offend, their life experiences and their rehabilitation needs are unique.

The report identifies systemic barriers to full equality and puts forward 19 recommendations for action (see Backgrounder 2 for a complete list) related to:

- risk and need assessment;
- safe and humane custody and supervision;
- rehabilitation and reintegration programming; and
- mechanisms for redress.

The most disturbing statistic is the over-representation of Aboriginal women in maximum security. Although Aboriginal women account for only 3% of the female population of Canada, they represent 29% of the women incarcerated in federal prisons and account for fully 46% of the women classified as maximum security.

Summary

The report sets out guiding principles that CSC can apply to ensure the treatment of federally sentenced women is consistent with human rights laws.

The report also provides a human rights analysis of CSC directives, programs and policies which affect women in federal institutions.

The report focuses on the discriminatory impact of some CSC policies and programs, particularly on Aboriginal women, racialized women and women with disabilities.

The report makes recommendations to address systemic barriers to equality.

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Resources

Legislation and Policies

Submissions to Parliament

BACKGROUNDER 2

Recommendations of the Special Report

Protecting Their Rights:
A Systemic Review of Human Rights in Correctional Services for Federally Sentenced Women

Profile of Federally Sentenced Women: Who Are They?

The reasons women offend, their life experiences and their needs are unique:

- Women account for less than 5% of all federal offenders. They are more often first-time offenders. Because of the generally less-violent nature of their crimes, women tend to receive shorter sentences.
- An overwhelming number – 80% – of federally sentenced women report being victims of prior abuse.
- Federally sentenced women have disproportionate rates of physical and mental disabilities. They are three times more likely than their male counterparts to suffer from depression. They also experience higher rates of mental illness, self-destructive behaviour such as slashing and cutting, and suicide attempts. Women with mental health issues, cognitive limitations and substance dependence are also disproportionately classified as maximum security.
- Federally sentenced women face much lower employment rates than male offenders, have less education than the general Canadian population and experience significant poverty.
- The most disturbing statistics relate to the disproportionate number of Aboriginal women in federal prisons. Although they account for only 3% of the female population in Canada, they make up 29% of the women in federal correctional facilities and the number sentenced to federal institutions is increasing. Aboriginal women account for fully 46% of the federally sentenced women classified as maximum security.
- Two-thirds of federally sentenced women are mothers and they are more likely than male offenders to have primary child-care responsibilities.

What These Statistics Mean for Human Rights

The report finds that in order to comply with the *Canadian Human Rights Act*, Correctional Service Canada (CSC) must accommodate women's differences, rather than treating inmates identically based on stereotypes and perceptions, or treating women prisoners the same as men.

The Commission found that, while CSC has made some progress in developing a system specifically for women offenders, systemic human rights problems remain, particularly with regard to Aboriginal women, racialized women and women with disabilities.

The report sets out guiding principles to ensure that the treatment of federally sentenced women is consistent with human rights laws. In sum:

- Federal women prisoners have a right not to be discriminated against and a right to correctional services as effective as those received by men.
- Equality must be based on the real needs and identities of women inmates, not on stereotypes or generalizations.
- CSC's duty to promote and protect the human rights of women means that it must take into account the fact that some of the reasons women offend, their life experiences and their rehabilitation needs are unique.

Summary of Key Recommendations

Chapter 4
Human Rights in the Assessment and Classification of Need and Risk

The assessment of an inmate's programming needs and her security risk affects where she is incarcerated, her security rating, how she is supervised, what kind of programming is available to her and her release conditions. The impact of these decisions can be far-reaching.

A faulty assessment can mean an offender has to participate in a program that is of little or no assistance. It can prevent her from participating in one that would help her reintegrate and can have an impact on when she is released.

Recommendation No. 1: Needs Assessment

The same tool is used for both women and men despite a recognition that women commit crimes for different reasons than men.

This is inconsistent with the *Canadian Human Rights Act*. The tool uses disability, for example, as an indicator of risk and need. Yet it is unclear how this predicts the risk of re-offending. The same is true of religion and ethnicity. The tool has not been validated for Aboriginal inmates. Given the over-representation of Aboriginal people in federal correctional institutions, this is of great concern.

It is recommended that CSC develops and implements a needs-assessment process that responds to the needs of federally sentenced women, including Aboriginal women, women who are members of racialized groups and women with disabilities.

Recommendation 2: Risk Assessment

The security classification of female and male offenders is assessed using the same tool, the Custody Rating Scale. From a human rights perspective, the Custody Rating Scale has a number of shortcomings:

- It does not adequately recognize that women and men offenders pose different security risks. Women inmates tend to be more at risk of harming themselves, while men offenders pose a greater risk of escape. Because the Custody Rating Scale does not adequately differentiate between these risks, women tend to be over-classified.
- It makes explicit distinctions on the basis of disability. These distinctions are not justified and require further research by CSC.
- It has a disproportionately negative impact on federally sentenced Aboriginal women. As of July 2003, Aboriginal

women accounted for 46% of all federally sentenced women classified as maximum security. Those classified as maximum security are barred from living at the Healing Lodge.

It is recommended that CSC create a security classification tool explicitly for federally sentenced women that takes into consideration the lower risk posed to public safety by most women and commission an independent study of the possible discriminatory impact of the existing tool on federally sentenced offenders with disabilities. It is also recommended that CSC act to address the disproportionate number of federally sentenced Aboriginal women classified as maximum security by immediately reassessing the classification of all Aboriginal women currently classified as maximum security using a gender-responsive reclassification tool. It is also recommended that the blanket policy of not allowing maximum security women at the Healing Lodge be changed to a policy that is based on individual assessment.

Recommendation 3: Classification of Offenders Serving Life Sentences

The policy that imposes a two-year automatic maximum security classification on offenders serving a life sentence for murder raises human rights concerns:

- It does away with individual assessment, which is one of the hallmarks of good human rights practice. Blanket categories or rules tend to result in discrimination. Processes that include appropriate individual assessment promote fairness.

- It adversely affects women serving life sentences because it fails to reflect the differences between some women and men in why they commit serious crimes. More women are sentenced to life for crimes involving violent domestic partners or former partners.

- It fails to consider how systemic problems in sentencing may result in Aboriginal people and members of other racialized groups receiving harsher sentences.

It is recommended that *Policy Bulletin No. 107*, which requires offenders serving a minimum life sentence for first- or second- degree murder to be classified as maximum security for at least the first two years of federal incarceration, be rescinded immediately in favour of fair and balanced individual assessment.

Chapter 5
Human Rights and Safe and Humane Custody and Supervision for Federally Sentenced Women

Studies have shown that women experience more sickness, more disability and more psychological distress in prison than male offenders and than the general female population.

The report finds that the level of health services appears to be uneven across correctional facilities. It points to the need for prompt access to health care, that CSC screening procedures should not impede access to essential treatment, and that better education and training is needed for correctional staff.

Recommendation 4: Harm Reduction Measures

The *Canadian Human Rights Act* recognizes that drug addiction is a disability. A range of harm reduction measures, including needle exchange, are available in the general community but not equally available to federal inmates.

It is widely recognized that drug use is rampant in our prisons and that HIV rates are higher among inmates than the Canadian population. The rate of HIV infection is particularly high for federally sentenced women, many of whom continue to use intravenous drugs behind bars.

The Commissioner of CSC has recognized the Service's obligation to make harm reduction measures available in prisons that are in keeping with community health standards. Bleach is provided to inmates to clean needles in prisons. To date, needle exchange has not been implemented because of concerns of increased drug use, compromising the zero tolerance policy for drugs in prison, and increased risks to institutional safety.

From a human rights perspective, harm reduction measures available to the general Canadian population should be

available to inmates. Refusing to implement harm reduction measures in prisons has implications for public safety – prisoners infected with HIV or hepatitis C may spread these diseases once they return to the community. Research has shown that needle exchange slows the spread of HIV without increasing drug use. Experience in countries that use needle exchange in prisons shows that it does not compromise institutional safety.

It is recommended that the Correctional Service of Canada implement a pilot needle exchange program in three or more correctional facilities, at least one of which should be a women's facility, by June 2005. The results of the pilot project should be monitored, disclosed and assessed within two years.

Mental Health

More federally sentenced women are diagnosed with mental illnesses and they have a higher rate of self-mutilation than their male counterparts and than the general female population. In addition, the high rate of previous physical and sexual abuse among federally sentenced women often affects their mental health.

The Service introduced a Mental Health Strategy in 1997 and revised it in 2002. However, it has not been fully implemented due to resource challenges. The report urges the Service to allocate the resources required.

The report calls for priority to be given to research into effective mental health interventions for inmates suffering from Fetal Alcohol Syndrome. It also notes the importance of having trained professionals provide voluntary individual abuse counselling to assist inmates to overcome the effects of their previous physical and sexual abuse.

Recommendation 5: Issues Concerning Male Guards

The report finds that the deployment of male guards in front-line positions adversely affects some federally sentenced women. Women inmates are more likely than men to be survivors of sexual abuse. More than 80% of federal women prisoners report past abuse, with more than half survivors of sexual abuse.

The report also finds that safeguards in place to decrease the risk of abuse and reduce the vulnerability of female inmates are not adequately respected.

It is recommended that CSC take immediate steps to ensure these safeguards are strictly respected, including formalizing the Operational Protocol, ensuring mandatory training and refresher courses and ensuring independent external assessment.

Recommendation 6: Segregation

Segregation is not easy for any inmate, but the effect of segregation on women can be significant. In her submission, one woman wrote: *"This (segregation) has affected me greatly as I now see or perceive myself to being a monster and rejected."*

There are also indications that Aboriginal women and other racialized women are more often singled out for segregation than other inmates. As of February 2003, Aboriginal women accounted for 28% of all incarcerated women yet made up 35.5% of all involuntary administrative segregation.

It is recommended that CSC implement independent adjudication for decisions related to involuntary segregation, with independent external assessment after two years. A Segregation Advisory Committee for Women's Institutions should be created with broad membership, and the Correctional Service should examine alternatives to long-term segregation for women offenders, in consultation with external stakeholders.

Recommendation 7: Facilities

The opening of the regional facilities for women and the Aboriginal Healing Lodge, following the closure of the Prison for Women in Kingston, marked progress. However, this was short-lived. After incidents at the Edmonton Institution for Women in 1996, additional security features were added to the regional facilities.

There is a lack of stand-alone facilities for minimum and medium security women. Medium and minimum security

women are housed in "multi-level" facilities with maximum security women. This means that physical security measures such as fences, gates, razor wire and cameras are emphasized and that minimum and medium security women are now incarcerated in more restrictive environments than their male counterparts.

It is recommended that the needs and low risk of minimum and medium security women inmates be considered in the construction of additional facilities for women.

Maximum security women tend to earn this designation because of problems with institutional adjustment. The means chosen to control risk (handcuffs, leg irons, staff escorts, etc.) probably increase women's problems with institutional adjustment and thus reduce their chances of obtaining a lower security classification. The Correctional Service needs to enhance programming which can assist in institutional adjustment.

Chapter 6
Human Rights and the Duty to Assist Federally Sentenced Women With Rehabilitation and Reintegration

Recommendation 8: Meeting the Rehabilitation Needs of Federally Sentenced Women

The Correctional Service of Canada is in the process of revising its *Correctional Program Strategy for Women Offenders* (1994).

A gender-responsive program strategy must recognize that some of the reasons women become involved with crime — and how they can change their criminal behaviour — are different than men's. The structure and content of rehabilitation programming must reflect this.

The report finds that access to programming needs to be improved. Some women told the Commission they do not have access to programs they need to fulfil the requirements of their correctional plans. This has forced some women to waive their right to a conditional release hearing.

It is recommended that CSC address this systemic flaw in identifying program needs by ensuring the revised program strategy for women acknowledges that some of women's criminogenic factors are unique, and develop and implement gender-responsive programming.

The 1994 Correctional Program Strategy promised to create a separate but parallel program strategy for Aboriginal women. The report finds that this has not yet been done, that access to Aboriginal programming is limited for Aboriginal women inmates not located at the Healing Lodge and that the unique needs of Aboriginal offenders should be reflected in the structure and content of programming.

For drug-dependent federal women inmates, the report finds that CSC's pilot Women Offender Substance Abuse Program holds promise and may serve as a model for other gender-responsive programming in the future.

Recommendation 9: The Need for Improved Employment and Employability Programming

Very few federally sentenced women have opportunities for meaningful work experiences or work releases while incarcerated, yet employment and employability is essential to successful reintegration particularly because their rates of employment are lower than for men. Their lower risk profile also means that there is less risk to the community.

It is recommended that CSC bring a gender focus to its employment and employability programming for federally sentenced women, including the development of job opportunities in the community.

Ensuring the Reintegration of Federally Sentenced Women

Recommendation 10: Appropriate and Adequate Community Housing

Women's needs for housing are different than men's. For example, women on conditional release need housing in which they can live with their children.

There is a shortage of appropriate housing for federally sentenced women on conditional release. Many federally

sentenced women are released into homeless shelters, co-ed facilities, and halfway houses. Other women remain incarcerated until their statutory release date because there is no community release facility available.

It is recommended that an action plan for each region should be developed to meet the need for accommodation for federally sentenced women on conditional release.

Recommendation 11: Community Programs and Services

Relapse into substance abuse is one of the main reasons why the conditional releases of women offenders are suspended. The new Woman Offender Substance Abuse Program provides programming throughout a woman's sentence – from prison to the community.

More women than men on conditional release have primary or sole responsibility for child care. Women on conditional release will reintegrate more successfully if they have access to more and better child care.

It is recommended that CSC continue to take steps to ensure greater continuity between programs offered in the institution and those offered in the community and offer more assistance to women on conditional release, particularly through employment counselling and child care.

Recommendation 12: Community Release Options for Federally Sentenced Women

The *Corrections and Conditional Release Act* provides options for the care and custody of inmates within Aboriginal communities, as well as the conditional release of offenders to Aboriginal communities. These provisions are rarely used, and they are used less often for women than men.

The report recommends that CSC work with Aboriginal communities on reserves and in urban centres to develop and support the capacity of those communities to assist with the rehabilitation and reintegration of federally sentenced women. In partnership with Aboriginal communities and organizations, the Correctional Service of Canada should review the use of section 84 of the *Corrections and Conditional Release Act*, identify barriers to its use, and create and implement an action plan to encourage its use for federally sentenced women. Progress should be reviewed and reported within one year.

It is recommended that Aboriginal women inmates be provided with an opportunity to consult with Elders before finalizing their correctional plans. With the agreement of individual women, Elders should play a key role throughout case management and release planning.

Chapter 7
Strengthening Internal Responsibility for Human Rights

Systemic change is best achieved by creating a culture of respect for human rights within an organization. Preventive measures include adequate training and education, strong policy frameworks and internal dispute resolution mechanisms.

The report finds a lack of systems and practices to ensure the availability of useful, up-to-date and consistent information about inmates' rights.

Organizational structures can enhance human rights compliance. The Deputy Commissioner for Women is a relatively new office within the CSC; however, it is not administratively responsible for the facilities for women. The Human Rights Unit does not appear to have sufficient resources to be proactive.

Recommendation 13: Human Rights Protection and Promotion

It is recommended that CSC develop an enhanced functional capacity to ensure the consistent protection and promotion of human rights across its operations.

Recommendation 14: The Need for an Anti-Harassment Policy for Inmates

CSC contends that inmates can file harassment complaints through the Offender Complaint and Grievance process, and that the essence of the Treasury Board Policy on the Prevention and Resolution of Harassment in the Workplace is applicable to complaints from inmates. However, the CSC employee anti-harassment policy specifically states that the TB harassment policy is not applicable to inmates.

It is recommended that, in consultation with its staff and inmates, CSC immediately develop and implement an anti-harassment policy and education program that applies to inmates, with independent anti-harassment counsellors for inmates.

Recommendation 15: The Need for a Comprehensive Accommodation Policy for Inmates

Good human rights practice requires clear and comprehensive human rights policies. CSC has taken steps to provide a policy framework to deal with accommodation requests from inmates. However, the Report finds this policy framework is fragmented and incomplete.

It is recommended that CSC immediately develop and implement a comprehensive accommodation policy addressing all prohibited grounds of discrimination. A short, plain-language version of the policy should also be developed and distributed.

Recommendation 16: Human Rights Education and Training for Inmates and Staff

For women entering prison, their primary source of information about their rights is the prison handbook. Yet the Commission found that only one of the women's facilities had easy-to-understand, accurate and up-to-date information about human rights.

It is recommended that CSC ensure that complete, consistent and accurate information is provided to inmates in all facilities; annually monitor the human rights content of materials and training; make available information in alternate formats and suitable for low literacy levels; and ensure manager's accountability accords include human rights compliance.

Recommendation 17: Mechanisms for Informal Dispute Resolution

In the Commission's experience, alternative dispute resolution can be successfully applied to human rights issues, with appropriate measures to address power imbalances, such as a clearly impartial process and adequate human rights knowledge.

It is recommended that CSC implement a pilot mediation project at facilities for women, using external mediators trained in human rights, as well as provide conflict resolution training for inmates. The pilot should be independently evaluated within two years.

The report also finds that the formal dispute resolution mechanism for grievances is seen as ineffective, with no protection against retaliation, lack of timeliness, and poor results and inadequate tracking of complaints related to gender.

Recommendation 18: Human Rights Audits

To date, CSC has completed only one human rights audit with very limited scope – a review of offender access to religious and spiritual programs and services.

It is recommended that CSC work with the Canadian Human Rights Commission to develop, implement and assess a human rights audit model, including the identification and measurement of human rights performance indicators and public reporting.

Chapter 8
Protecting Human Rights Requires Effective External Redress

A specialized, independent, external oversight function would strengthen respect for human rights.

Most submissions received by the Commission backed the idea of an independent body with enforcement powers. Options include an administrative tribunal with the power to compel CSC to comply with legislation and policy governing the administration of sentences and to order compensation. Other options include strengthening the powers of the Office of the Correctional Investigator: for instance, the power to enforce its recommendations.

The report finds that funding for prisoners to take steps to protect their rights is, in some circumstances, necessary for those rights to become a reality. The Court Challenges Program offers one model of funding that could be expanded or developed by the Government of Canada for prisoners.

Recommendation 19: External Redress

It is recommended that the Solicitor General of Canada and CSC, in consultation with stakeholders, establish an independent, external redress body for federally sentenced offenders.

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Resources

Legislation and Policies

Submissions to Parliament

Protecting Their Rights A Systemic Review of Human Rights in Correctional Services for Federally Sentenced Women

ANNEX A - Bibliography, Legislation, Regulations, Commissioner's Directives, Policy Bulletins and Cases

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Previous Page Table of Contents

Last Updated: 2005-09-14